Reaching Agreement on Regional Service Review and Withdrawal Disputes

Ministry of Community, Aboriginal and Women's Services

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The *Local Government Statutes Amendment Act, 2000* amends the *Local Government Act* and gives regional districts a new framework for developing service delivery partnerships with municipalities and electoral areas. With this new legislation in place, B.C.'s local governments can:

- design innovative and sustainable service arrangements,
- review how regional district services are provided, and
- withdraw from service arrangements in some cases.

This publication looks at ways local governments can renegotiate service arrangements effectively through service reviews or agree on service withdrawal, if necessary. It focuses on the following ways to reach agreement:

- interest-based negotiation,
- facilitation, and
- mediation.

Cooperation Between Service Partners

Service Arrangements

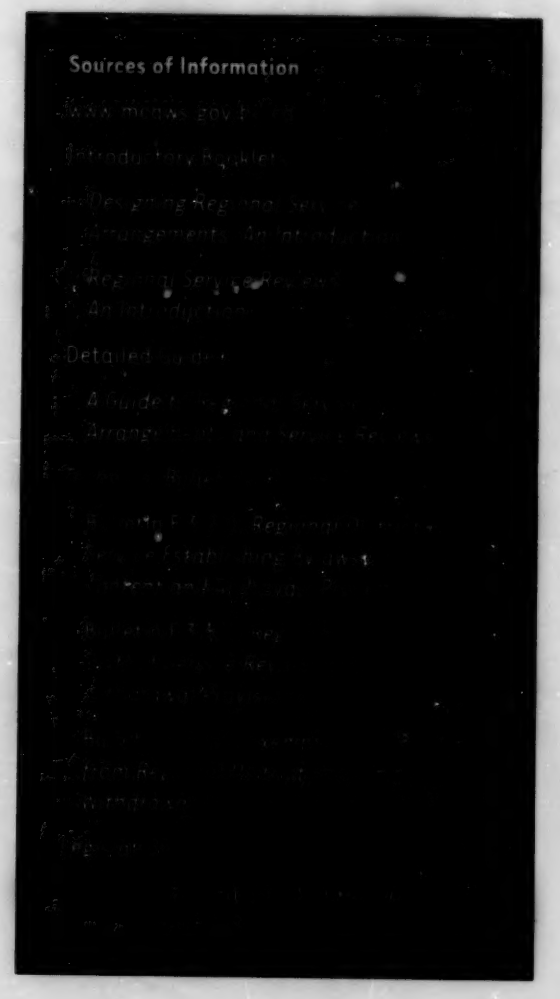
To fulfill their service delivery role, regional districts work to encourage cooperation and trust between municipal and electoral area service partners. For their part, service partners will cooperatively participate in service arrangements they see as fair and beneficial. They must believe these arrangements provide benefits and that these benefits outweigh the financial costs and other compromises needed to achieve them. They must also feel that they have a degree of control over the shared service. Conflict can occur when the conditions for the original agreement or vote have changed, or if service partners feel they have little leverage to make change happen.

Service Reviews

Under past regional district voting rules, a dissatisfied partner had little power to start a review process that would adapt services to meet new conditions created by change. To prevent local governments from being tied to unsuitable service arrangements forever, the *Local Government Act* provides opportunities for periodic service reviews. These reviews let service delivery partners address their changing service needs, renegotiate the terms and conditions of a service arrangement, and resolve differences internally. Any type or number of services can be reviewed. Regional districts and their service partners have three service review options now:

- Informal Review
  - independent of Act's review provisions
  - proactive
  - can be started any time by regional district
- Bylaw-based Review
  - included in establishing bylaw
  - over-rules statutory review, once adopted
  - review timetable set in establishing bylaw

- Statutory Review
  - default option
  - applies unless bylaw specifies an alternative
  - can be started by service partner every three years, at most



Service Withdrawal

The *Local Government Act* provides a process for a service participant to withdraw from a service if they cannot agree on changes to the terms and conditions for the service. Before, participants could only withdraw from a service following the same assent and consent procedures that they followed to get in, or with the approval of two thirds of all the participants. Now, the Act creates a rational and fair process for any participants to withdraw from a service, in the hope that service partners can resolve their differences and continue to have a good working relationship for the service and on other issues.

When Service Withdrawal is Not an Option:

- core government functions (i.e. general administration)
- regulatory services (i.e. building, animal, nuisance)
- mandatory functions (those functions required by another Statute), and
- services exempted by Cabinet regulation:
  - emergency telephone system
  - transit
  - regional parks
  - regulation, storage and management of municipal solid waste and recyclable materials

-1 17

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Sources of Information

www.mcaws.gov.bc.ca

Introductory Booklets:

Designing Regional Service Arrangements: An Introduction

Regional Service Reviews: An Introduction

Detailed Guide:

A Guide to Regional Service Arrangements and Service Reviews

Technical Bulletins:

Bulletin F.3.2.0, *Regional District Service Establishing Bylaws: Content and Approvals Process*

Bulletin F.3.5.0, *Regional District Service Review and Withdrawal Provisions*

Bulletin F.3.6.0, *Exemptions from Regional District Service Withdrawal Provisions*

Legislation:

Division 4.5 of Part 24 of the *Local Government Act*.

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In any working relationship, tension and conflict is natural. Because of their different circumstances and goals, members of regional districts sometimes disagree with each other. Resolving these disputes internally by negotiating a fair outcome will smooth relationships and help the regional district and its members fulfill their mandates more effectively. Solving conflicts early will also help members avoid stressful and costly arbitration or court action.

In 1995, the *Local Government Act* was amended to introduce alternative dispute resolution processes to resolve growth management disputes between local governments. With further amendments to the *Local Government Act* in 2000, ADR has been extended to regional district services. This legislation emphasizes:

- equal and fair treatment of service partners;
- mutual agreement, consensus and collaborative decision-making;
- interest-based negotiation;
- facilitation;
- mediation; and
- arbitration for service withdrawal, when necessary.

A Principled Approach to Dispute Resolution

In any working relationship, tension and conflict is natural. Because of their different circumstances and goals, members of regional districts sometimes disagree with each other. Resolving these disputes internally by negotiating a fair outcome will smooth relationships and help the regional district and its members fulfill their mandates more effectively. Solving conflicts early will also help members avoid stressful and costly arbitration or court action.

Where Alternative Dispute Resolution is Used

Alternative dispute resolution tools have been used with frequent success in labour, residential tenancy, environmental, land use and commercial disputes for the past 10 years in B.C. Increasingly, other types of conflicts are also being resolved through alternate methods of dispute resolution. For example, B.C.'s Supreme Court system allows one party to any civil, non-family court action to require other parties to go to non-binding mediation.

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- interest-based negotiation;
- facilitation;
- mediation; and
- arbitration for service withdrawal, when necessary.

Definitions

INTEREST-BASED NEGOTIATION: Discussions to find an agreement between parties based on the interests of negotiating parties, rather than their positions.

FACILITATION: Joint negotiations where a person neutral to the issues and parties manages the discussions to ensure clear and on-going communication.

MEDIATION: Joint negotiations where a person neutral to the issues manages the discussions and acts as a go-between among negotiating parties to help them achieve mutual understanding and agreement. The mediator is involved in finding a solution. There is often a fine line between facilitation and mediation.

ARBITRATION: A formal process where a neutral third party makes a decision for the parties in the dispute. The decision is based on facts and evidence, not negotiation.

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A principled approach to resolving regional service disputes requires all service partners working to create a process that is fair, efficient and effective so they can resolve the issue and maintain a positive working relationship. Ensuring "buy-in" to the process, where all agree to participate and work towards agreement is another important factor. Dispute resolution processes help service partners focus on the real issues in dispute because they can work together to set the agenda and decide what the terms of the agreement will be. If the parties agree on a resolution, they are more likely to be satisfied with it and are, therefore, more likely to put it into practice and make it work.

An appropriate dispute resolution process helps service partners reach agreement quickly and efficiently in the early stages of negotiation by requiring them to work closely together on service arrangement issues. Everyone is expected to negotiate in good faith and make all efforts to reach agreement, with or without the assistance of a facilitator, mediator or other person neutral to the issues in dispute.

Resolving Service Review Disputes

An informal review is initiated and undertaken by the regional district at any time. All service partners should participate. There is no legislative framework that guides this type of service review.

For a bylaw-based review, service establishing bylaws can state a time period for service reviews and the participants in a review. The statutory service review option permits reviews no more often than every three years and the legislation specifies who can participate. To request a review, whether bylaw-based or statutory, service partners must have taken part in the service for at least five years.

Service partners in informal and bylaw-based service reviews are not required to use ADR, but the use of interest-based negotiation and if needed, facilitation, mediation and, in some cases, arbitration is encouraged. The statutory option incorporates an ADR process that includes elements of interest-based negotiation, facilitation, mediation and arbitration.

Service partners in a review negotiate disputes either without outside help, or with the help of an independent facilitator or a mediator. If a service partner in an informal or bylaw-based review wants the help of a facilitator, all partners need to agree. The statutory option provides for the appointment of a facilitator, upon the request by any one service partner.

If a statutory review has begun, the Minister of Community, Aboriginal and Women's Services may choose to appoint a facilitator who monitors the review and helps the participants reach agreement. At any time, the facilitator can help service partners to resolve disputed issues, or provide advice on how to set up their own mediation or other dispute resolution process. If the partners cannot reach an agreement, one or more partners may choose to withdraw from the service.

Resolving Service Withdrawal Disputes

The *Local Government Act* allows service partners to withdraw from certain services only after the partners fail to resolve the issues in dispute to everyone's satisfaction. Partners can withdraw only under certain conditions. Further, service partners must try to agree on fair terms and withdrawal conditions through negotiation, facilitation or mediation. A minister-appointed facilitator can help service partners to reach acceptable terms and conditions of withdrawal.

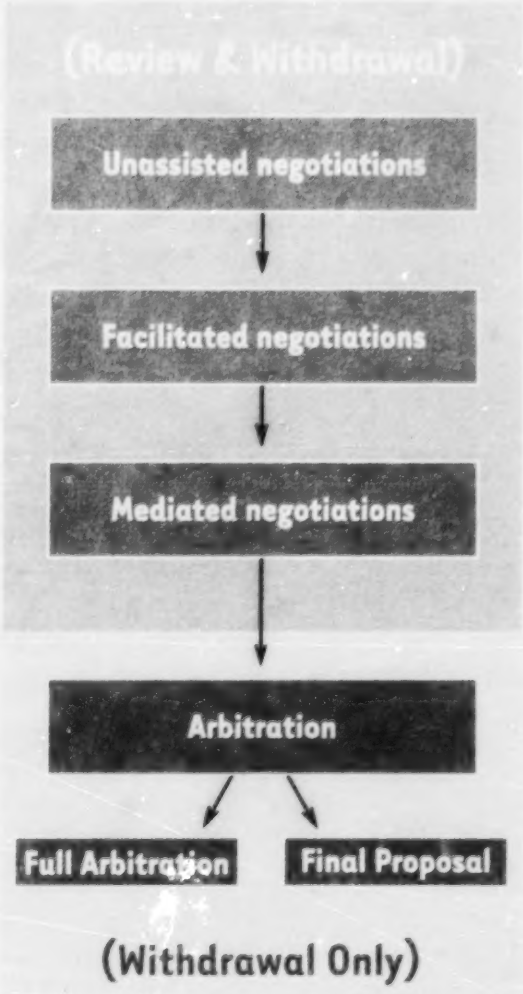
If these methods are unsuccessful, the Act provides two arbitration options to end the dispute: full arbitration or final proposal arbitration. Parties to a dispute would be referred to one of the arbitration processes only as a last resort when all other methods of dispute resolution have failed.

Methods of Arbitration

FULL ARBITRATION is a formal hearing in a court-like process with witnesses and evidence. An arbitrator reviews the testimony and submissions before making a final decision. This can be a very time-consuming and expensive dispute resolution method.

FINAL PROPOSAL is an arbitration method where disputing parties submit written dispute resolution proposals to an arbitrator. There are no oral hearings, testimony or other submissions allowed. The arbitrator chooses which proposal will be put into effect for each issue in dispute, meaning that one party "wins" and the other "loses". This option is less expensive and time-consuming than full arbitration.

At all stages in a service review or withdrawal process, including the arbitration process and for 60 days after, the Act encourages parties to resolve issues. Wherever possible, the emphasis is on reaching agreement.



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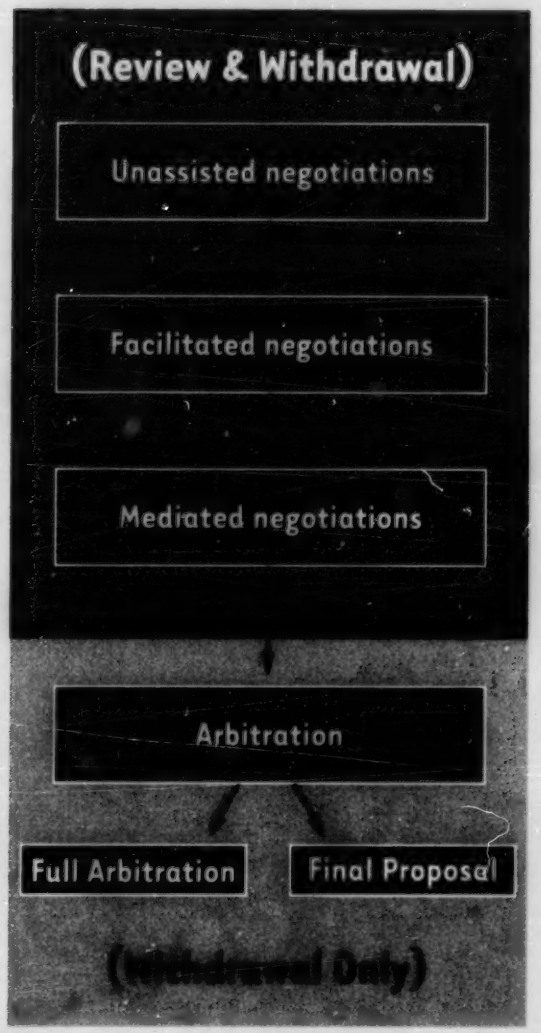


Examining Sources of Conflict

The first step in resolving differences is to discuss possible sources of conflict. Unless everyone understands the underlying reasons for a disagreement, it will be impossible to overcome an impasse. Polarizing an issue into "us against them" is never helpful. Most often, problems center around the issue at stake or the way people deal with one another. Conflicts can arise from:

- unequal impacts, benefits or costs;
- different expectations, assumptions or forecasts;
- different definitions of the issue;
- different values;
- fragile relationships;
- different standards of behaviour;
- decisions/actions on unrelated issues.

Interest-Based Negotiation: Strengthening Relationships

Interest-based negotiation is becoming a common way of making decisions, particularly when a long-term relationship is important. Because it tries to find mutually acceptable answers, it usually improves relationships. Other methods of decision-making, such as majority votes, courts or arbitration, often result in "winners" and "losers", an outcome that tends to strain future relationships. An interest-based approach that is based on mutual agreement will:

- provide an opportunity for people to gain a better understanding of diverse views;
- provide the framework for establishing a united approach;
- lead to more "win/win" outcomes;
- ensure service participants are not forced into a vote that commits them to a position;
- make implementation easier to achieve.

Typical methods of negotiation have focused on the *positions* held by negotiating parties. Often, these positions would become entrenched and lead to an impasse where negotiations fail and arbitration or court action becomes the next option. Under this traditional type of negotiation, there is little opportunity to explore joint gains, and cooperation is seen as a sign of weakness.

Interest-based negotiation focuses on the *interests* of the negotiating parties to produce outcomes efficiently and amicably, as an alternative to positional bargaining. It changes the context for resolving disputes by creating a negotiating environment that rewards joint problem solving. When participants view themselves as problem-solvers, they depart from the traditionally adversarial model of positional bargaining to develop a list of

possible options and then arrive at a final solution that relies on objective standards, rather than on the will of any individual. The goal is joint progress for everyone at the negotiating table towards an outcome that meets the underlying interests of all concerned.

Interests

Interests include:

- **Needs**
- **Desires**
- **Concerns**
- **Fears**
- **Hopes**

Interest-based negotiation is founded on the following principles:

1. Separate the people from the problem.
   - **Don't take disagreements personally or attack individuals who disagree.**
   - **Work together for a shared solution.**
2. Focus on interests, not positions.
3. Use objective criteria.
   - **Agree on a fair standard for evaluating solutions, rather than stubbornly sticking to positions.**
4. Design options for mutual gain.
   - **Explore creative ideas for problem solving.**
5. Know your best and worst alternatives to a negotiated agreement.
   - **Know what alternatives there are if negotiations fail.**
6. Encourage joint fact-finding.
   - **Information must be believable and acceptable to everyone.**
   - **Openness overcomes skepticism.**
7. Accept responsibility, admit mistakes and share power.
   - **Pursue reasonable goals.**
   - **Focus on cooperation and the desire to have a long-term relationship.**
8. Act in a trustworthy way at all times.
   - **Keep all promises.**
   - **Say what is meant and mean what is said.**
   - **Do not demand results that others cannot deliver.**
9. Focus on building long-term relationships.
   - **Use short-term issues to nurture long-term goals.**

All nine principles complement one another and can be used together as an efficient and effective way to approach negotiations and conflict resolution.

Establishing a Process for Interest-Based Negotiation

Service review or withdrawal negotiations could involve many parties and are, therefore quite different from more typical two-party negotiations. The number of parties involved makes negotiations more complex. As well, these negotiations require more preparation so that everyone begins negotiations with a similar understanding of what is being negotiated and how to proceed. Often, it is helpful for individual parties to be trained in negotiation before they begin so that they can become familiar with the issues independently without outside pressure from other parties. Negotiations take more time than arbitrary decisions, but the productivity resulting from smooth working relationships makes this time well spent.

There are generally five steps to reaching agreement:

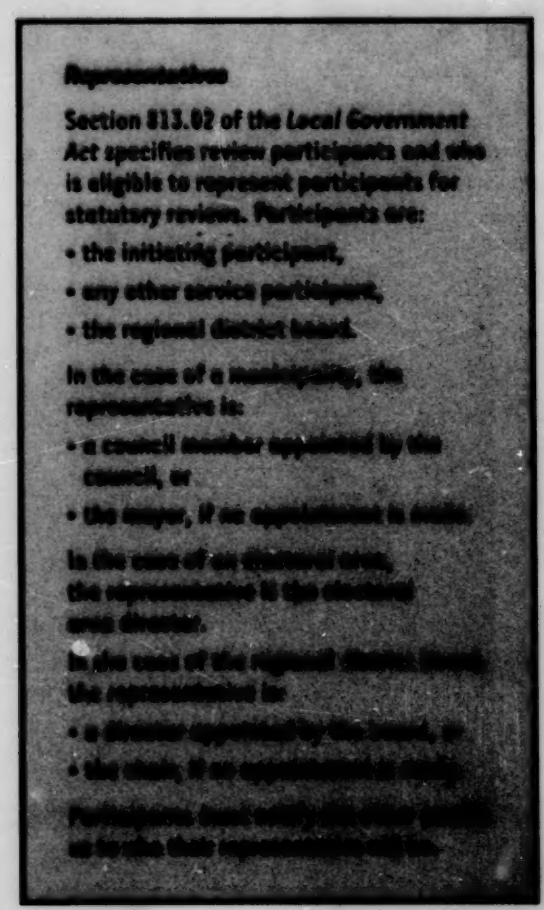
1. preparation,
2. assessment,
3. establishing process and procedure,
4. identifying and revealing interests,
5. creating options and solutions.

At all stages, trust is a key to successful negotiations.

Step 1: Preparation

The first step in establishing a negotiation process is to determine who may want to participate. In an informal review, the regional district should provide an opportunity for all service partners to participate. The establishing bylaw that sets out a bylaw-based review should identify those parties who can and should participate in a review. The statutory option provides all local governments participating in a service with the opportunity to participate in a dispute resolution process relating to that service. Limiting participation is not an option.

Participants choose who will represent them and how their representatives will communicate with their local government. The Act specifies who is eligible to represent participants for statutory reviews.


Representatives
Section 813.02 of the Local Government Act specifies review participants and who is eligible to represent participants for statutory reviews. Participants are:
• the initiating participant,
• any other service participant,
• the regional district board.
In the case of a municipality, the representative is:
• a council member appointed by the council, or
• the mayor, if no appointment is made.
In the case of an electoral area, the representative is the electoral area director.
In the case of the regional district board, the representative is:
• a director appointed by the board, or
• the chair, if no appointment is made.
Participants must notify the other parties as to who their representative will be.

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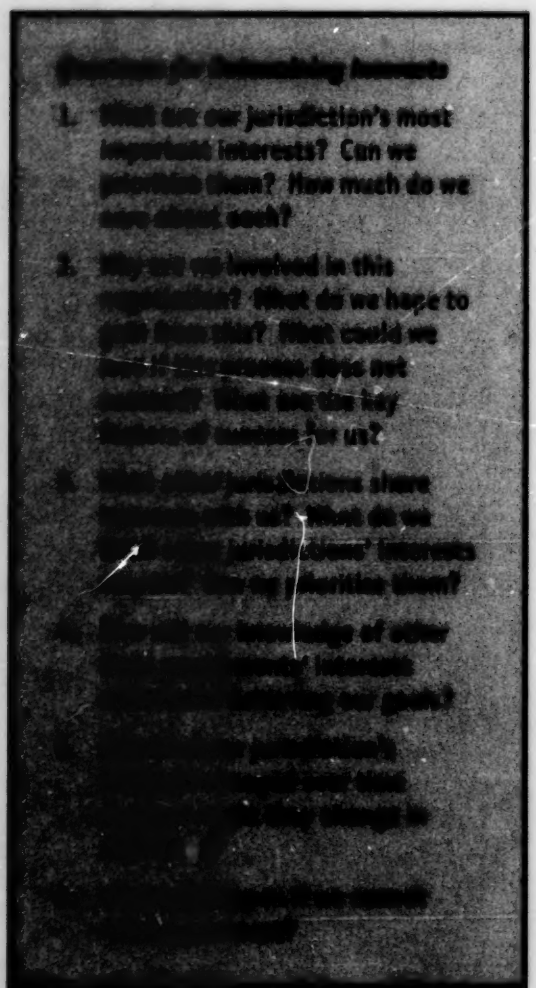
- the chair, if no appointment is made.

Participants must notify the other parties as to who their representative will be.

Step 2: Assessment

Each local government participating in negotiations needs to:

- clarify existing information and identify information gaps;
- think about interests that need to be met and why;
- prioritize issues by importance;
- clarify any assumptions about the other participants;
- look at issues from the others' point of view;



- determine if education regarding the negotiating process and effective participation is required;
- be ready to listen carefully to what others say;
- be ready to speak clearly in a way that will make others want to listen.

Step 3: Establishing the Process and Procedures

Setting a positive tone from the outset of negotiations is crucial to their success. Convening events, such as the preliminary meetings required in a statutory review, can serve to establish the process and procedures for negotiations before they begin. By establishing ground rules, everyone knows their respective roles and responsibilities. These ground rules can cover such things as:

- decision-making rules;
- external communication with stakeholders, public and the media;
- summaries of meetings;
- whether or not the assistance of a facilitator/mediator is required.

Agreeing on matters as simple as when and where to meet sets the tone. Meeting consistently and frequently is also helpful. Focusing on one or two specific issues per meeting rather than trying to deal with everything, ensures that meetings are productive. Negotiating these ground rules proves to participants that the outcome is ultimately theirs to control. They can also see how they would lose control if they fail to reach an agreement and require an arbitrator.

Early discussions or preliminary meetings establish the motivations of each party and their commitment to the process. They allow parties to list an agenda of concerns that incorporates all the issues and concerns raised by the participants. This list, known as a

problem statement, should be endorsed by all parties in the negotiation because it provides a focus for future meetings and discussions. Participants also have the opportunity to decide in advance how they will deal with the possible outcomes of negotiations and be held accountable for them. As well, ensure that any requirements imposed by the *Local Government Act* or other legislation, such as the *Freedom of Information and Protection of Privacy Act*, are included when establishing an agreement on process and procedures. Such an agreement should be flexible and open to amendment as proceedings progress. Criteria for the timing and methods used for amendments should also be established.

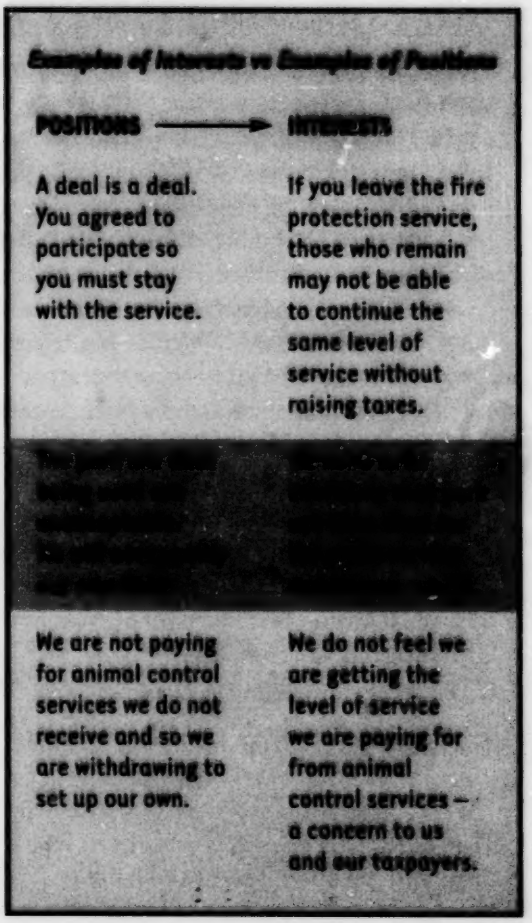
Within the statutory review process, preliminary meetings can be facilitated by a provincially appointed facilitator. Once the process issues are worked out, the parties can then decide if they want the facilitator or other neutral party to assist them with the negotiating process.

Step 4: Identifying and Revealing Interests

During the fourth stage, all participating parties identify key interests for negotiation. As well, all indicators for measuring these interests must be determined and clarified. Establishing a work plan will identify tasks, such as undertaking studies or preparing cost projections, determine who will do them and set deadlines. The work plan can also be used to start a working group of senior staff from the regional district and municipalities to undertake joint studies and information gathering.

To get participants to think about interests instead of positions, it may help to:

- establish an historical context by asking staff and others to provide relevant background information;


Examples of Interests vs Examples of Positions
POSITIONS
INTERESTS
A deal is a deal. You agreed to participate so you must stay with the service.
If you leave the fire protection service, those who remain may not be able to continue the same level of service without raising taxes.
We are not paying for animal control services we do not receive and so we are withdrawing to set up our own.
We do not feel we are getting the level of service we are paying for from animal control services – a concern to us and our taxpayers.

- develop a joint vision statement (i.e. what goals to meet, ideas about the future);
- prepare a summary of interests (interest statements) where all individual interests expressed are condensed.

These steps help parties look for shared views and combine similar interests. This can usually be done several times to make sure all interests are included. At the end of this exercise, it should be clear what the joint and individual interests are and what a successful agreement should address. It may also help to develop indicators, such as how the partners would know when water quality concerns are met.

Step 2: Assessment

Each local government participating in negotiations needs to:

- clarify existing information and identify information gaps;
- think about interests that need to be met and why;
- prioritize issues by importance;
- clarify any assumptions about the other participants;
- look at issues from the others' point of view;

Questions for Determining Interests

1. What are our jurisdiction's most important interests? Can we prioritize them? How much do we care about each?
2. Why are we involved in this negotiation? What do we hope to gain from this? What could we lose if this process does not succeed? What are the key factors of success for us?
3. What other jurisdictions share interests with us? What do we think other jurisdictions' interests may be? Can we prioritize them?
4. How will our knowledge of other local governments' interests assist us in achieving our goals?
5. How have our jurisdiction's interests changed over time and how might they change in the future?
6. What will happen if we cannot reach agreement?

- determine if education regarding the negotiating process and effective participation is required;
- be ready to listen carefully to what others say;
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Agreeing on matters as simple as when and where to meet sets the tone. Meeting consistently and frequently is also helpful. Focusing on one or two specific issues per meeting rather than trying to deal with everything, ensures that meetings are productive. Negotiating these ground rules proves to participants that the outcome is ultimately theirs to control. They can also see how they would lose control if they fail to reach an agreement and require an arbitrator.

Early discussions or preliminary meetings establish the motivations of each party and their commitment to the process. They allow parties to list an agenda of concerns that incorporates all the issues and concerns raised by the participants. This list, known as a

problem statement, should be endorsed by all parties in the negotiation because it provides a focus for future meetings and discussions. Participants also have the opportunity to decide in advance how they will deal with the possible outcomes of negotiations and be held accountable for them. As well, ensure that any requirements imposed by the *Local Government Act* or other legislation, such as the *Freedom of Information and Protection of Privacy Act*, are included when establishing an agreement on process and procedures. Such an agreement should be flexible and open to amendment as proceedings progress. Criteria for the timing and methods used for amendments should also be established.

Within the statutory review process, preliminary meetings can be facilitated by a provincially appointed facilitator. Once the process issues are worked out, the parties can then decide if they want the facilitator or other neutral party to assist them with the negotiating process.

Step 4: Identifying and Revealing Interests

During the fourth stage, all participating parties identify key interests for negotiation. As well, all indicators for measuring these interests must be determined and clarified. Establishing a work plan will identify tasks, such as undertaking studies or preparing cost projections, determine who will do them and set deadlines. The work plan can also be used to start a working group of senior staff from the regional district and municipalities to undertake joint studies and information gathering.

To get participants to think about interests instead of positions, it may help to:

- establish an historical context by asking staff and others to provide relevant background information;
- develop a joint vision statement (i.e. what goals to meet, ideas about the future);
- prepare a summary of interests (interest statements) where all individual interests expressed are condensed.

These steps help parties look for shared views and combine similar interests. This can usually be done several times to make sure all interests are included. At the end of this exercise, it should be clear what the joint and individual interests are and what a successful agreement should address. It may also help to develop indicators, such as how the partners would know when water quality concerns are met.

Examples of Interests vs Examples of Positions

POSITIONS ⟶	**INTERESTS**
A deal is a deal. You agreed to participate so you must stay with the service.	If you leave the fire protection service, those who remain may not be able to continue the same level of service without raising taxes.
The park use data being used are unacceptable. We will accept only our own data.	**We need to be confident that park use data used for the parks service review is accurate.**
We are not paying for animal control services we do not receive and so we are withdrawing to set up our own.	We do not feel we are getting the level of service we are paying for from animal control services – a concern to us and our taxpayers.

Step 5: Creating Options and Solutions

This stage begins with parties jointly confirming and summarizing areas where they already have agreement. During this phase, it is always important to keep in mind areas of interest that must be met, as agreed in the previous stage. It is important to create and evaluate options *before* developing solutions to disagreements:

- Look at options that parties have brought forward to see if they can be put together to achieve joint interests and goals. Options need to be listed and evaluated so parties can choose fair solutions.
- Encourage brainstorming that allows originality to come forward but does not address specific solutions. Parties can go back and see if there are links between the ideas to create a practical approach to resolving the conflict(s).
- Establish committees to recommend imaginative solutions for a particular area of interest.

To find options to resolve an issue, each party can develop an individual scenario or all parties can work together from the beginning. If the first approach is used, the parties will need to develop options for mutual gain when the table comes together again. Proposed solutions can then be tested by discussing hypothetical situations that may arise regarding the provision of the service, or group of services, in the region.

It is important to properly document agreements reached, areas where consensus has not been gained, and further work to be done. Such documentation can help to explain to future decision-makers and the public what agreement was reached, how it was reached and why it was reached. Where final agreement was not possible, the documentation can identify the barriers that participants were not able to overcome and any future steps that might be taken to try and overcome them. Lessons learned also help future decision-makers avoid similar pitfalls.

Assistance Available for Negotiations

Interest-based negotiations can be successful without obtaining outside help from a neutral person. To achieve this unassisted success, three conditions are necessary:

1. the issues in dispute, and the number of parties participating in negotiations, should be relatively few and easily identified;
2. the parties to the negotiation must be able to communicate with each other effectively enough to allow joint problem solving;
3. the uncertainty surrounding the outcome must be quite high for all parties.

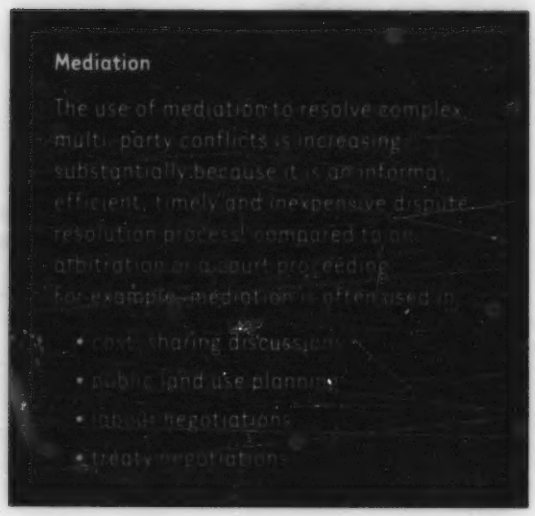
Sometimes, parties cannot overcome their differences or move beyond their positions to abide by the principles of interest-based negotiation. In these cases, adding a neutral person to the process may be helpful. There are two roles that can be filled by a neutral person: facilitator and mediator. Facilitators and mediators guide discussions, but control remains with the negotiating parties. Facilitation and mediation can help parties resolve differences where:

- communication between parties is poor;
- financial stakes are high or the conflict has become intensely emotional;
- there are misperceptions, stereotypes, or perceived value differences hindering productive exchanges;
- multiple issues are in dispute and parties cannot agree on the procedure for addressing them;
- power imbalances exist between participants.

Facilitators and Mediators

Facilitator

A facilitator is a neutral person who manages the discussions in joint negotiation sessions to keep them on track. This person remains neutral concerning the issues under discussion and does not express the views or opinions of any side of the negotiation. However, the facilitator can express the perspectives of the entire group and can acknowledge areas of agreement and areas of difference in the positions held. The facilitator is considered an advocate for the dispute resolution process itself, rather than for specific outcomes or the position of any single party. This person is independent of the control of any single party. A facilitator does not usually participate in achieving a settlement. If a facilitator begins work to help partners achieve a mutual solution, he or she is crossing over into mediation, as discussed below.



Mediator

A mediator is a person who helps disputing parties reach their own mutually acceptable settlement for disputed issues voluntarily. Rather than just facilitating negotiations, a mediator serves as a go-between between the negotiating parties to help them understand each other and reach a settlement. Mediators help parties look for mutually beneficial outcomes that further their wide range of interests by keeping them focused on the problem to be addressed and the negotiation agenda. They try to avoid getting involved in political disputes, making judgments or determining the political feasibility of decisions. Instead, they help untangle such disputes or show that they are not useful to the discussions. A mediator must work hard to build a climate of trust and make sure that disputing parties make their own decisions, rather than imposing solutions on them. Unlike an arbitrator or judge, a mediator has no authoritative power to make decisions.

Mediation can resolve many types of disputes, even those that are long-standing and difficult. A mediator works to reconcile the competing interests of disputing parties so that solutions meet everyone's standards of fairness. Because the mediator has no decision-making power, disputing parties are most likely to seek mediation when they want to retain ultimate decision-making power. Note that mediation is mandatory only for the statutory service withdrawal process.

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Mediation

The use of mediation to resolve complex, multi-party conflicts is increasing substantially because it is an informal, efficient, timely and inexpensive dispute resolution process, compared to an arbitration or a court proceeding. For example, mediation is often used in:

- cost-sharing discussions
- public land use planning
- labour negotiations
- treaty negotiations

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Minister-Appointed Facilitator

The Minister of Community, Aboriginal and Women's Services can appoint a facilitator (who has a combined facilitation/mediation role) under section 813.01 of the *Local Government Act*. As well as managing the process and keeping lines of communication open, the minister-appointed facilitator can help parties craft their own options and solutions for resolving their disputes. The facilitator can help participants to:

- frame and present their interests, concerns and opinions in a constructive way;
- identify their objectives;
- become aware of their shared areas of concern;
- maintain clear communication and, when necessary, reopen lines of communication;
- focus on issues early in the process and on solutions later in the process;
- reach consensus and draft a written agreement.

Any party to a statutory service review or withdrawal can request the help of a minister-appointed facilitator. Senior ministry staff will most often be chosen to serve as facilitators. Because the success of dispute resolution processes depends on all parties accepting a facilitator as fair-minded, the ministry intends to appoint facilitators who are as neutral as possible to the issues under discussion. Often, two people will be chosen to serve as a co-facilitation team, providing a greater range of experience, knowledge and skills to the dispute resolution process. Although a facilitator will be provided to local government participants by the ministry at no cost to local governments, this service may be limited at any one time by the number of service reviews or withdrawals already underway and the availability of trained facilitators.

If the participants are not comfortable with a minister-appointed facilitator, they are completely free to hire an independent facilitator or mediator to assist them in their negotiation process. It should be noted that if an independent facilitator or mediator were hired, this would be done entirely at the expense of the parties in dispute.

Selecting an Independent Mediator

If the parties in a dispute decide not to request a minister-appointed facilitator, or if conflict still remains after a facilitation process, the parties may decide to hire an independent mediator. Deciding to enter independent mediation and selecting a mediator are decisions that are usually the result of discussions between parties. No one party can start an independent mediation process if the other parties do not wish to participate. The ability to agree on the use of mediation is easier if local governments have a clear idea of the mediator's role, the skills required and the purpose of the mediation. Whoever is chosen must be independent of all parties and the issues in dispute. The mediator must also be acceptable to all parties.
A mediator should be a well-trained, reliable and thoughtful generalist with experience in dispute resolution and not necessarily a substantive expert in any particular area. Usually, mediators should be good at analyzing conflict so they can overcome the reason(s) negotiations have broken down to the point where a mediator is required.

Selecting a mediator depends on four major factors:

- the type of negotiation the parties have been conducting until now;
- the nature of the problem that is interfering with the negotiation process;
- the type of negotiation the parties want to conduct to resolve the dispute;
- whether special expertise or unusual credentials are required.

Expectations of a Mediator

A mediator involved in regional service review and withdrawal negotiations will need to become familiar with:

- the provincial *Local Government Act*, and any related acts, regulations and provincial policy guidelines in relation to regional district service;
- the regional district service establishing bylaw, the participants and the services under review within the regional district where mediation services have been requested;
- the history of negotiations and relationships between the regional district, member municipalities and electoral areas that are parties to the dispute resolution process.

Mediators are expected to maintain the confidentiality of information obtained through the process except:

- with the consent of all parties;
- where required or allowed to disclose information by law or by contract;
- non-identifying information for research, education or consultation purposes.

When entering into a contract with a mediator, the regional district and service participants will be establishing standards of conduct. The following standards should be included:

- Mediators must have a neutral relationship to all parties involved in mediation. They should reveal any and all affiliations that may cause a conflict of interest or affect perceived or actual neutrality.
- Mediators must remain impartial and objective during the mediation process. The mediator assists the parties to reach an informed and voluntary agreement consistent with the requirements of the *Local Government Act*.

- The primary responsibility for resolving a dispute rests with the parties. At no time shall a mediator coerce the participants into agreement or make a substantive decision for any participant.
- Mediators will avoid any activity that could create a conflict of interest. They will not become involved in relationships with clients that might impair their professional judgment. They will not mediate disputes involving close friends, relatives or colleagues.
- Mediators will enter into an "Agreement to Mediate" with the parties to mediation.
- The mediator has a duty to actively encourage participants to make decisions based on sufficient information, knowledge and advice and in this respect the mediator must encourage full disclosure of all relevant information by all parties.
- The mediator has an on-going obligation to advise participants of the availability of independent legal advice.
- The mediator will suspend or end mediation whenever continuing the process may harm or prejudice one or more of the participants, or when mediation is no longer useful. In the event the mediator believes that an agreement being reached is unreasonable, he or she must advise the parties of this and must consider withdrawing from the mediation.

A key to agreement is finding a set of principles that all the participants can endorse, and then refining those general principles to take account of the special and different needs of each participant. The success of a complex multi-party, multi-issue negotiation hinges on creating a sense that the process, as well as the outcome, is fair to everyone involved.

Mediation probably does not produce significantly higher rates of settlement. However, mediation substantially changes the character and timing of settlements. Mediated settlements tend to be more truly collaborative and enduring, and help maintain an ongoing working relationship between the parties. As well, settlement tends to occur earlier than might otherwise be the case, which is a goal of the dispute resolution provisions of the regional district service legislation.

If mediation does not resolve a dispute over service withdrawal, the minister must direct the disputing parties to use arbitration. In arbitration, a neutral person will impose a decision based on facts and evidence.

Conclusion

Successful dispute resolution is based on fairness, the mutual satisfaction of participants and the effectiveness of the process. Specifically, a successful dispute resolution process will be characterized by the following:

- fair approach;
- free and open communication;
- equal opportunity for participation;
- participants have control over the process;
- participants understand each others' interests;
- no personal criticism;
- all issues of concern are addressed;
- all identified joint objectives are met;
- outcomes can be measured and monitored;
- participants support the agreement;
- participants are satisfied with the process and outcomes.

The *Local Government Act* encourages regional districts and their members to resolve disputes over service review and withdrawal amicably and with a view to finding solutions that work for everyone. Alternative dispute resolution is a best practice that will smooth long-term working relationships and minimize the tensions and costs of adversarial conflict. The use of interest-based negotiation, facilitation and mediation can lead to a timely and effective resolution of disputes between service agreement partners and different levels of government.

For more information contact:

Ministry of Community, Aboriginal and Women's Services
Local Government Policy and Research Branch
P.O. Box 9490 Stn. Prov. Govt.
Victoria, B.C. V8W 9N7

Phone: 250 387-4084
Fax: 250 387-6212

E-mail: mareview@hq.marh.gov.bc.ca

Ministry of Community, Aboriginal and Women's Services website:
www.gov.bc.ca/mcaws